

No. 12-2216 PO

The Director filed a motion for summary decision on March 8, 2013. We notified Mr. Riggs that he should file any response by March 25, 2013, but he filed nothing.

Our Findings of Fact are based on the admissible evidence, which we discuss immediately below.

### **Evidentiary Rulings**

By failing to respond to the Director’s motion for summary decision, Mr. Riggs has failed to raise a genuine issue as to the facts the Director properly established in his motion. 1 CSR 15-3.446(6)(B).<sup>1</sup> The Director bases his motion, in part, on an affidavit of a custodian of records and authenticated records from a criminal case against Mr. Riggs, including the docket sheet, felony information, and judgment. Facts demonstrated by these exhibits are properly established and we consider them for purposes of ruling on the Director’s motion.

The Director also bases his motion on the unanswered complaint and requests for admissions. As to the complaint, Mr. Riggs did not answer or otherwise respond to it. By failing to do so, he “[a]dmitted the facts pleaded” therein. 1 CSR 15-3.380(7)(C)1. But we conclude that paragraphs 8 and 10 of the complaint are not well-pleaded facts. Paragraph 8 provides: “The actions alleged [herein] were committed while on active duty or under color of law and involved moral turpitude.” From the pleading perspective, the allegation may be sufficient to put Mr. Riggs on notice of the issues. But from the fact-finding perspective and for purposes of ruling on a motion for summary decision, it is not. It is conclusory and ambiguous. Even if one or the other scenario is likely to be true, sufficient supporting facts are not provided in that paragraph or elsewhere in the complaint to demonstrate which one, and we cannot simply pick one. Paragraph 10, alleging cause for discipline exists under § 590.080.1(2) and (3),<sup>2</sup> is a

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<sup>1</sup> All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> References to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

conclusion of law. Therefore, we do not consider the allegations contained in paragraphs 8 and 10 of the complaint, but we do consider the others.

We do not consider the requests for admissions, even though Mr. Riggs failed to answer them, because the requests were not in proper form. The rules of civil procedure relating to discovery, such as requests for admissions, generally apply in cases before this Commission. § 536.073.2, RSMo (2000); 1 CSR 15-3.420. Under Missouri Supreme Court Rule of Civil Procedure 59.01, when a party fails to respond to requests for admissions, the party is ordinarily deemed to have admitted the requests. Here, the Director served requests on Mr. Riggs, a copy of which the Director attached to his motion as “Exhibit A.” The first page of the exhibit correctly reflects the caption of this case, but the explanatory paragraph below it refers to “Respondent, Marcus B. Fountain.” On the following pages, the numbered requests refer to “Riggs.” Because the form of the requests could have caused confusion on the part of the respondent, we deem them withdrawn and do not deem the requests to have been admitted by him.

Accordingly, we base our findings of fact on the affidavit of the custodian of records; the authenticated records from a criminal case against Mr. Riggs, including the docket sheet, felony information, and judgment; and the unanswered complaint, except paragraphs 8 and 10.

### **Findings of Fact**

1. Joey Christopher Riggs’ Missouri peace officer license is active and has been at all times relevant herein.
2. Mr. Riggs was the Chief of Police for the City of Caruthersville giving him access to the City’s Criminal Investigation Fund.
3. Between June 3, 2009 and August 29, 2011, Mr. Riggs appropriated at least

\$25,000 from the City's Criminal Investigation Fund, without consent and with the purpose to deprive the City and the Criminal Investigation Fund thereof.

4. On July 25, 2012, Mr. Riggs pled guilty in the Dunklin County Circuit Court to "Theft/Stealing (Value of Property or Service is \$25,000 Or More," a class B felony under § 570.030, RSMo.

5. On September 20, 2012, the court entered a suspended imposition of sentence, and gave Mr. Riggs five years' supervised probation.

### **Conclusions of Law**

We have jurisdiction of this matter. § 590.080.2, RSMo.

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers. §§ 590.020, .030, and .080, RSMo. When the Director files a complaint with this Commission asking us to determine there is cause for discipline, § 590.080.2, the Director bears the burden of proving so by a preponderance of the evidence. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Here, the Director alleges cause for discipline of Mr. Riggs' peace officer license exists under § 590.080.1(2) and (3):

1. The director shall have cause to discipline any peace officer licensee who:

\* \* \*

(2) Has committed any criminal offense, whether or not a criminal charge has been filed; [or]

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

The argument portion of the Director's motion is short. The Director cites § 590.080, recites some of the facts from his statement of facts, and concludes:

Respondent's commission of the crime of Stealing provides cause to discipline his license pursuant to § 590.080.1(2) and (3), RSMo Supp. 2012. (Exhibits A and B).<sup>3</sup>

The undisputed facts demonstrate Mr. Riggs committed the criminal offense of "Theft/Stealing (Value of Property or Service is \$25,000 Or More," a class B felony under § 570.030. He pleaded guilty to the crime. Therefore, cause for discipline exists under § 590.080.1(2).

As for the Director's claim under § 590.080.1(3), we cannot draw a similar conclusion. While the evidence suggests Mr. Riggs committed an act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person, insufficient evidence supports the conclusion. We do not have the benefit of briefing from the Director explaining how he believes this portion of the statute applies, but we observe, for example, that there is no evidence of when Mr. Riggs held his position as chief of police.<sup>4</sup> Therefore, we do not conclude the Director has demonstrated cause for discipline exists under § 590.080.1(3).

### **Summary**

We grant summary decision in part and deny it in part.

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<sup>3</sup> Petitioner's Motion for Summary Decision and Suggestions in Support, p. 9.  
<sup>4</sup> We reach no conclusion with respect to what evidence would have sufficed.

This case remains set for hearing on June 26, 2013, with respect to the § 590.080.1(3) claim. The Director may file anew for summary decision with respect to that claim on or before May 10, 2013, or may notify us if he does not wish to pursue the claim.

SO ORDERED on April 23, 2013.

/s/ Alana M. Barragán-Scott  
ALANA M. BARRAGÁN-SCOTT  
Commissioner